

**SETTLEMENT AGREEMENT IN STATE OF NEVADA EMPLOYEES ASSOCIATION,
LOCAL 4041 AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO, v. JACKIE CRAWFORD, ET AL. (N-03-146).**

WHEREAS PLAINTIFFS to this lawsuit are the State of Nevada Employees Association, Local 4041 American Federation of State, County and Municipal Employees, AFL-CIO (“SNEA”), Samuel Covelli, and Joseph Vanacore (hereafter “Plaintiffs”);

WHEREAS DEFENDANTS to this lawsuit are Jackie Crawford, Glen Whorton, Stephanie Humphrey, Craig Farwell, Don Helling, E.K. McDaniel, Mike Budge, Sherman Hatcher, Dwight Neven, Charles McBurney, and Jack Palmer (hereafter “Defendants”);

WHEREAS Plaintiffs filed this lawsuit on December 26, 2002 in the southern division of the United States District Court for the District of Nevada, where it was assigned cause number S-02-1720, and thereafter transferred to the northern division of said Court, assigned cause number N-03-0146;

WHEREAS on June 18, 2003 Plaintiffs and Defendants entered into formal settlement discussions assisted by United States Magistrate Judge Valerie P. Cooke, who has retained jurisdiction over this matter pending an agreed settlement;

WHEREAS Plaintiffs and Defendants have agreed to the terms of a settlement that is satisfactory to both Plaintiffs and Defendants and that permit Plaintiffs to dismiss their claims with prejudice (hereinafter referred to as “Dismissal”);

THEREFORE Plaintiffs and Defendants set forth the terms of this Settlement Agreement (hereinafter referred to as “Agreement”):

1. In order to clarify the First Amendment rights and limits of public safety employees, Plaintiffs and Defendants have agreed to the terms of a notification of rights for distribution to the employee mailbox of each NDOC employee. NDOC¹ distributed the notification to the

¹ The term “NDOC” will be used occasionally in reference to some or all defendants, inasmuch as these defendants in their official capacities may cause NDOC to take the described actions.

employee mailbox of each NDOC employee. A copy of the notification is attached hereto as Exhibit A.

In accordance with the terms of the notification, Defendants agree to notify Plaintiff SNEA regarding the use of gatehouses for speech purposes at the various NDOC institutions. Defendants and Plaintiffs agree to work towards upholding the principles set forth in the attached notification and to consult when matters of dispute thereunder arise.

NDOC has stated its intent to require all NDOC staff to receive mandatory training on the First Amendment by July 31, 2004. SNEA recognizes the potential merit of such training, especially where they are conducted by persons knowledgeable about the First Amendment, where a range of viewpoints are expressed, and where the training is imparted to all NDOC employees regardless of rank. The parties agree to explore and discuss in good faith the possibility of designing and conducting a program of First Amendment training in cooperation. In addition to participation by the Nevada Office of the Attorney General, participation in such a program may include an attorney or representative appointed by SNEA. The parties agree to discuss this proposal in good faith; however, the failure to agree to a jointly designed program shall not constitute a violation of this Agreement.

2. The Equal Employment Opportunity (“EEO”) investigation which opened in January 2003, naming the below-listed parties as subjects of that investigation, has been closed. The investigation did not reveal a violation of Title VII discrimination pursuant to 42 U.S.C. § 2000 *et seq.*

Sgt. Samuel Covelli

C/O Humberto Guadalupe

Lt. Edison Walker

C/O Lauren Chapulin

C/O William “Mark” Clarke

C/O Henry Rees

C/O John Richardson

C/O Kevin Ranft

Administrative Services Officer Tom Waggoner

Therefore, NDOC Director Jackie Crawford sent a letter to each of the above-named employees indicating that the EEO investigation has been closed and the investigation did not reveal a violation of Title VII. The Office of the Inspector General (“OIG”) subsequently reviewed the EEO files and determined that there is no other cause for further disciplinary action against any of the above-named employees arising from the investigation, except as indicated below in ¶ 3. Director Crawford subsequently sent a letter to each of the above-named employees indicating that they will be subject to no further disciplinary actions arising out of the investigation, except as indicated below in ¶ 3. The letters referred to in this section shall not go into the personnel files of the above-named NDOC employees. The personnel files of these employees shall contain no other reference to this investigation.

3. Defendants shall return William “Mark” Clarke to High Desert State Prison to the position, shift and days off that he worked prior to his transfer. Defendants have reserved the right to pursue disciplinary charges against Mr. Clarke if supported by credible evidence and just cause in accordance with the Nevada Administrative Code. Nothing in this Settlement precludes Mr. Clarke, or SNEA acting on his behalf, from raising all defenses or claims that he might have in response to such charges in any judicial forum. This Settlement shall not be preclusive of any legal or factual issue that might arise in subsequent proceedings.

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4. In the interest of fostering communication and solving problems, SNEA and NDOC agree to conduct meet-and-confer sessions pursuant to the following terms. The parties agree that the wardens of NDOC institutions will meet with SNEA delegations at each of the institutions for the purposes of conferring about matters of concern related to employment at NDOC. Both NDOC and SNEA agree that these meetings will take place upon the request of either party at a mutually agreeable time and place at each institution. Neither side will be obliged to meet more frequently than once every calendar month. SNEA agrees that its delegations will be limited to 8 SNEA members of its own choosing. NDOC agrees that wardens will make themselves available to meet. Either side may request notice of the subject matter of the discussion. All participants shall conduct themselves professionally and courteously during the course of the meetings.

The purpose of the meet-and-confer sessions at the institutional level is to solve problems and resolve issues at the place where they occur. Should meetings at the institutional level prove unsuccessful in resolving any particular issue, the wardens and/or SNEA delegation may request that the issue be further discussed by Assistant Director for Operations Glen Whorton, or his successor, and SNEA Executive Director, Scott MacKenzie, or his successor. Mr. Whorton and Mr. MacKenzie will make good faith efforts to resolve the dispute, and to communicate their resolution to the wardens and SNEA delegations respectively. Where necessary, Mr. Whorton and Mr. MacKenzie agree to counsel the wardens or SNEA members that, in the view of the Mr. Whorton or Mr. MacKenzie, the other side's point of view is the correct one.

Disputes arising about the operation of this agreement shall be discussed in good faith by Mr. Whorton and Mr. MacKenzie. Where necessary, either side may ask for the intervention of

the Nevada Office of the Attorney General or attorneys for SNEA in order to address the functioning of the agreement. The purpose of this agreement is to foster communication in a manner that is constructive and fruitful. Therefore, SNEA agrees that it will not operate, sponsor, or give its approval to any internet “chat-room” for its NDOC members during the operation of this agreement.

5. NDOC Director Jackie Crawford revised Administrative Regulation (“AR”) 319 to incorporate new section 319.07, addressing the protocol for assessing complaints of harassment based upon Title VII. AR 319.07 instructs EEO officers to determine whether the prima facie elements of a Title VII violation exist prior to initiating a Title VII investigation, and instructs them to confine their investigation and questions to issues directly relevant to Title VII violations.

6. NDOC Director Jackie Crawford finalized temporary AR 340 governing investigatory protocols. This AR sets forth guidelines for OIG investigations, a description of categories of conduct that is subject to OIG investigation, the responsible party for carrying out these investigations, and so forth. NDOC has made temporary AR 340 available to the public pursuant to N.R.S. 289.055.

The OIG has developed a set of guidelines in concert with AR 340 to put into practice the investigative protocols set out in AR 340. NDOC has made these guidelines available to NDOC staff.

The OIG is also formulating a set of guidelines to assist NDOC administrators in adjudicating charges of wrongdoing against staff. The OIG expects to complete these guidelines within the next three to six months.

7. NDOC maintains the position that it does not keep and has never kept “secret files” regarding NDOC staff and agrees that it shall not maintain such files. In order to counter the perception among some staff that such files are kept, NDOC has formulated a written notification that states that NDOC has never maintained such files and that any permanent or working files kept on staff members are open to inspection by the staff member to whom they pertain. This written notification was prominently posted on staff bulletin boards. It has also been distributed to the mailboxes of NDOC employees.

8. NDOC affirms that it has reviewed the personnel files of employees at Warm Springs Correctional Center to remove any reference to the questionnaire involving the “pond issue” (an issue involving the circulation of a questionnaire about the safety of a pond). Any letter of reprimand and/or performance card entry referencing the pond issue has been removed, and prior annual performance evaluations have been re-written to remove references to it. Any pending individual grievance arising from those evaluations may go forward. Should any other reference to this issue later be made or discovered, it shall also be removed from personnel records and no future employment action will be based on the pond issue.

9. NDOC has restored the notice of commendation that was given to C/O Guadalupe prior to the initiation of the property room audit in its original form or in as close to original form as reasonably possible.

10. NDOC performs audits periodically to ensure the proper operation of NDOC facilities. In the usual case, audits will not be conducted to create unfair surprise, unless circumstances necessitate an audit in the event of suspected serious misconduct. Audits shall not be performed absent prior warning and in circumstances creating unfair surprise unless there is probable cause

that a serious violation is occurring which requires action without notice. ADO Whorton held a meeting with all NDOC wardens and associate wardens, appraising them of the proper reasons and methods to conduct an audit.

11. NDOC posted on staff bulletin boards and distributed to the mailboxes of all NDOC employees the following notification: “All staff are reminded that Administrative Regulations, Directives, Nevada Administrative Code, and State and Federal law apply to all staff, regardless of rank, assignment or division.”

NDOC reserves the right to initiate disciplinary action whenever instances of misconduct are substantiated based on credible evidence and just cause in accordance with the Nevada Administrative Code.

12. Defendants shall maintain Plaintiff Covelli on paid administrative leave with benefits until September 1, 2004. At that time, Plaintiff Covelli will have accrued 18 years of service with the State of Nevada, and will retire. Defendants will not proceed with any disciplinary action against Plaintiff Covelli related to the facts of this lawsuit.

Plaintiff Covelli may take secondary employment during his period of administrative leave according with the terms of AR 355. Should he do so, he will submit a Request for Secondary Employment Form pursuant to AR 355.02. Normal and customary consideration of such a request will be given pursuant to the principles and factors set forth in AR 355.01. Approval for any Request for Secondary Employment may not be unreasonably withheld or revoked. Such withholding or revocation is subject to challenge through an action to enforce this Agreement, notwithstanding AR 355.02 1.1.3. NDOC shall place Plaintiff Covelli on a shift that does not conflict with his qualifying secondary employment.

13. Defendants permitted Plaintiff Vanacore to voluntarily terminate his employment for 48 hours to allow him to withdraw funds from his self-funded pension. NDOC reinstated Plaintiff Vanacore to the status of paid administrative leave with benefits for a period of 120 days thereafter. At the end of this 120 day period, Plaintiff Vanacore will voluntarily terminate his employment on December 3, 2003. Plaintiff Vanacore's personnel file shall carry the notation: "Not eligible for re-hire with the Nevada Department of Corrections."

14. Plaintiffs and Defendants agree to submit the issue of Plaintiffs' attorneys fees and costs arising from this lawsuit to U.S. Magistrate Judge Valerie P. Cooke for a binding arbitration. The parties agree that Judge Cooke will establish the time line and procedures for briefing any motion. Neither party will appeal Judge Cooke's ruling on fees and costs. When Judge Cooke renders her decision, the parties shall file appropriate papers with the Court to effectuate dismissal of this action with prejudice.

15. In a spirit of cooperation and in an effort to foster a positive working relationship for the future, Plaintiffs and Defendants agree to conduct a joint announcement of the settlement of this lawsuit. The announcement is attached hereto as Exhibit B. No party to this action shall make any press statement other than the joint announcement. Both parties reserve the right to respond to negative press coverage with regard to this settlement if deemed necessary.

16. The terms of this Agreement are contractual and not mere recital. The terms and conditions of this Agreement shall be binding on all parties. This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements and understandings written or oral, between the parties hereto pertaining to the subject dispute.

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17. In consideration of the conditions and covenants made in this Agreement, each party hereto hereby releases and forever discharges the other from any and all claims, demands, obligations, losses causes of action, liabilities whatsoever that may presently exist in favor of one against the other arising out of the factual occurrences forming the basis for this lawsuit.

18. Plaintiffs and Defendants agree to dismiss this lawsuit with prejudice with regard to the claims arising out of these factual occurrences forming the basis for this lawsuit. Certain Defendants originally named in this lawsuit, not parties to this Agreement, have been voluntarily dismissed without prejudice by Plaintiffs, and this Agreement does not extend to them.

19. Nothing contained in this Agreement shall be construed as an admission of liability or wrongdoing by any party to this Agreement.

20. This Agreement shall be binding on and inure to the benefit of the successors, assigns, heirs, legatees, executors, and administrators of the parties hereto.

21. Counsel for each party has reviewed this Agreement. Accordingly, the general rule of construction to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement.

22. This Agreement is entered into in United States District Court for the District of Nevada and shall be construed and interpreted in accordance with federal law and the laws of the State of Nevada.

23. Prior to seeking court action to enforce this Agreement, any party believing the other party to be in breach of this Agreement shall personally consult with the other party and make a bona fide effort to resolve the matter without court action. In the event the parties are unable to resolve the dispute through consultation, the non-breaching party may bring any appropriate

action in the United States District Court of Nevada, northern division, in no less than ten (10) days after written notice to the other party.

24. This Agreement shall be enforceable in the United States District Court for the District of Nevada, northern division. Defendants hereby waive any immunities or other jurisdictional defenses only to the extent necessary to enable such enforcement.

25. In any action to enforce, interpret or seek damages for violation of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys fees, litigation expenses, and court costs from the opposing party.

26. This Agreement shall neither constitute nor establish any precedents and has no effect other than as set forth herein. It is expressly understood and agreed that the terms of this Agreement may not be introduced as evidence or otherwise utilized in any future proceeding not involving the parties hereto and the Agreement herein.

27. Plaintiffs and Defendants waive any and all rights to pursue legal fees not specifically set forth in this Agreement arising from cause CV-N-03-0146.

28. The undersigned have full authority to execute this Agreement, on behalf of the named party, where signing in a representative capacity. This agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

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Plaintiffs

State of Nevada Employees Association
Local 4041, American Federation of
State, County and Municipal Employees
(AFSCME)

Dated: _____

By: _____

Defendants:

Jackie Crawford, Director

Date: _____

By: _____

Stefanie Humphrey, Warden

Date: _____

By: _____

Eldon K. McDaniel, Warden

Date: _____

By: _____

Jack Palmer, Assoc. Warden of Ops

Date: _____

By: _____

Charles McBurney, Assoc. Warden of Ops

Date: _____

By: _____

Dwight Neven, Assoc. Warden of Ops

Date: _____

By: _____

Samuel Covelli

Dated: _____

By: _____

Joseph Vanacore

Dated: _____

By: _____

Glen Whorton, Assist. Dir. of Prison Ops

Date: _____

By: _____

Craig Farwell, Warden

Date: _____

By: _____

Donald Helling, Warden

Date: _____

By: _____

Michael Budge, Warden

Date: _____

By: _____

Sherman Hatcher, Warden

Date: _____

By: _____